

The Honorable Christopher M. Alston
Chapter 7
Hearing Location: Kitsap County Courthouse,
614 Division St., Courtroom 104, Port
Orchard, WA 98366
Hearing Date: February 20, 2019
Hearing Time: 1:00 p.m.
Response Date: February 13, 2019

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re:

Case No.: 18-14780-CMA

Catherine Dawn Kroesser

Chapter 7

Debtor

MOTION FOR RELIEF FROM STAY AND
MEMORANDUM IN SUPPORT THEREOF

COMES NOW, Nationstar Mortgage LLC d/b/a Mr. Cooper ("Creditor") and moves the Court pursuant to 11 USC §362(d) for an Order Terminating the Automatic Stay, allowing Creditor to proceed with any and all contractual and statutory remedies incident to the interest held by virtue of the note and deed of trust described below and attached as exhibits to this motion and memorandum.

I. RELEVANT FACTS

A. The Property

On or about February 15, 2007, John Kroesser and Catherine Kroesser executed a note in favor of Quicken Loans Inc. in the original principal amount of \$250,500.00 ("Note"). The debt described by the Note is secured by a deed of trust ("Deed of Trust") properly recorded and creating a lien against property commonly described as 1531 Thompson Dr, Bremerton, WA 98337 (the "Property").

1 Creditor is the holder of the Note and thus has standing to enforce the Note pursuant to
2 RCW §62A.3-301. The Deed of Trust was pledged as incident to the Note and thus, as the
3 holder of the Note, Creditor also has the right to enforce the Deed of Trust that follows the note.
4

5 Subsequent to the execution of the Note and Deed of Trust, Debtors have filed for
6 protection under Chapter 7 of Title 11 of the United States Code.

7 Upon information and belief, no foreclosure sale is pending as of the date of this motion.
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10 **B. The Debt**

11 As of December 21, 2018, Debtor is due for the July 1, 2018 payment. The approximate
12 amount owed under the terms of the Note is \$249,315.80. This is an approximation of the lien,
13 including principal balance plus accrued interest, late charges, escrow shortages and other fees
14 and costs, as allowed under the terms of the Deed of Trust. This estimate is accurate as of the
15 date provided to counsel for the Creditor and is intended only for the purposes of this motion.
16 This amount cannot be relied upon for any other purposes, including payoff of the secured debt.
17 A complete, date specific and itemized payoff figure may be obtained from Movant upon written
18 request to counsel for Creditor.
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20 In addition to the Debt owed to Creditor, a junior lien in favor USAA is scheduled in the
21 amount of \$51,188.26.
22

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24 **C. The Value of the Property**

25 The value of the Property as represented in Debtor's sworn schedules is \$340,000.00.
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27 **II. ARGUMENT AND AUTHORITY**

28 **A. Standing**
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1 To prosecute a motion for relief from the automatic stay as to enforcement of a note and
2 deed, a movant must establish that it has an interest in the note, either as a holder, or as a party
3 entitled to enforce the note. See *In re Veal*, 450 B.R. 897 (9th Cir. BAP 2011). In the case at bar,
4 the declaration and exhibits supporting the motion establish that Creditor is the holder of the
5 Note and thus has standing to prosecute the present motion.
6

7 **B. Basis for Relief from Stay**

8 Under 11 U.S.C. 362(d)(1), on request of a party in interest, the court shall grant relief from
9 stay for cause. In the case at bar, the Debtor appears to have a one half interest in the Property
10 and the Property is to be sold pursuant to a decree of dissolution. The obligation is now more
11 than 6 months in default and continued default without payment only serves to reduce any equity
12 that may exist in the Property. Because the Debtor has filed for protection under the liquidation
13 provisions of Chapter 7, the Property is necessary for an effective reorganization and the only
14 issue is whether there is value in the Property for the estate. Absent liquidation by the trustee,
15 Creditor requests the court terminate the stay and allow enforcement of the obligation in the
16 absence of a private sale completed by the Debtor has ex-spouse. If the trustee is to liquidate the
17 Property, Creditor asks that a marketing schedule be established as to the extent that equity
18 exists, it is quite thin and declining by the day.
19

20 **III. RELIEF REQUESTED**

21 For the reasons stated above, Creditor requests:

- 22 1. An Order Terminating the Automatic Stay.
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1 2. Alternatively, for an Order requiring adequate protection of Movant's interest in
2 the Property.

3 3. For such other relief as the Court deems proper.

4 Dated: January 4, 2019

 McCarthy & Holthus, LLP

6 /s/ Lance E. Olsen

7 Lance E. Olsen, Esq. WSBA 25130

8 Michael S. Scott, Esq. WSBA 28501

9 Kathy Shakibi, Esq. WSBA 49381

 Attorney for Movant

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CERTIFICATE OF SERVICE

On 1/4/2019, I served the foregoing **NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY; MOTION FOR RELIEF FROM AUTOMATIC STAY; DECLARATION IN SUPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY AND ALL EXHIBITS SUPORTING THE MOTION AND DECLARATION** on the following individuals by electronic means through the Court's ECF program:

TRUSTEE

John S Peterson
kingstontrustee@hotmail.com

DEBTOR'S COUNSEL

Angela M. Michael
angela@amichael-law.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Salvador Arroyo
Salvador Arroyo

On 1/4/2019, I served the foregoing **NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY; MOTION FOR RELIEF FROM AUTOMATIC STAY; DECLARATION IN SUPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY AND ALL EXHIBITS SUPORTING THE MOTION AND DECLARATION** on the following individuals by depositing true copies thereof in the United States mail, enclosed in a sealed envelope, with postage paid, addressed as follows:

DEBTOR

Catherine Dawn Kroesser, 299 NW Bridle Ridge Blvd, Bremerton, WA 98311

US TRUSTEE

700 Stewart St Ste 5103, Seattle, WA 98101

BORROWER

John Kroesser, 1531 Thompson Dr, Bremerton, WA 98337

OTHER LIEN HOLDER

USAA Savings Bank, 10750 McDermott Freeway, San Antonio, TX 78288

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Hue Banh
Hue Banh